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| 10/540,096 | 06/20/2005 | Jens Ole Sorensen | 155-2 | 6421 |
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| EDWARD W CALLAN NO. 705 PMB 452 3830 VALLEY CENTRE DRIVE SAN DIEGO, CA 92130 | | | EXAMINER CASTELLANO, STEPHEN J | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/540,096

Applicant(s)

SORENSEN ET AL.

Examiner

/Stephen J. Castellano/

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5-7, 9-12, 14, 15, 20-22 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) 20-22 and 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-7, 9-12, 14, 15 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 2-4, 8, 13, 16-19 and 23-24 have been canceled. Claims 1, 5-7, 9-12, 14-15, 20-22 and 25-30 are pending.

Applicant's election of Group 1: Fig. 4 in the reply filed on January 26, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 20-22 and 28-30 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 26, 2009.

Claims 20-22 and 28-30 are directed to the species of Fig. 17. It seems apparent from applicant's remarks and the written specification that ribs of the one wall component aligned at an angle to ribs of the other wall component means that the longitudinal axis of the ribs are not aligned but perpendicular to each other at an angle of 90 degrees as shown in Fig. 17. For this reason, claims 20-22 and 28-30 have been withdrawn. Please see applicant's remarks at the third paragraph of page 11, the second paragraph of page 12 and the second paragraph of page 13.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-7, 9-12, 14-15 and 25-27 are rejected under 35 U.S.C. 102 (e) as being anticipated by Schafer.

Schafer discloses a coherent product including a wall section, the wall section is shown to be a bottom or base wall in Fig. 4, the wall sections comprises two components, a first plastic component with horizontal wall having surface 2, the horizontal wall forms a web and vertical ribs 5, the second plastic component (cover plate 20 forming a web with ribs or detents 23). The ribs 5 are wider in their vertical extending width than the thickness of the web (horizontal wall having surface 2).

Re the thickness of the ribs, Schafer could be applied such that the first and second components are switched, the first component (cover plate 20) has ribs that are thicker at the protrusion that forms the detent than the web of the first component.

Re claims 5 and 25, Schafer may be turned on its side to form an open front container with the bottom 3 extending vertically rather than horizontally so that the former bottom 3 is positioned as a side wall.

Re claim 7, the ribs (detents 23) of the second component (cover plate 20) are wider (because the width of the ribs (detents 23) extends in either of two directions as shown in Fig. 4, if the length of the ribs (detent 23) is vertical then the width extends horizontally and into the page as shown in Fig. 4, or if the length of the ribs (detents 23) is horizontal then the width extends vertically. Either way width of the ribs (detents 23) is greater than the web thickness of the second component.

Re injection molding, the Abstract at line 3 recites the "injection molding" process. However, injection molding is a product-by-process limitation within a product claim and is only

given weight insofar as it structurally differentiates the product. Injection molding doesn't differentiate the product.

Re claims 14 and 27, (see Fig. 4) one rib (rib 5 of first component with opening 25) of said at least one pair of spaced apart ribs of said one wall component (first component) contacts the web of the other said wall component (cover plate 20, second component), and the other rib (rib 5 of first component with opening 26) of said at least one pair of spaced apart ribs of said one wall component (first component) doesn't contacts the web of the other said wall component. There is a notch defined in the space between the pair of spaced apart ribs, the notch is adjacent to rib 5 of first component with opening 25, the rib (detent 23) of the other wall component is disposed in the notch.

Re claim 15, rib (detent 23) of the other wall component does not fully occupy the notch.

Claims 1, 5-7, 9, 12, 15 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Burling.

Burling discloses a coherent product including a wall section, the wall section is shown to be a side wall, the wall sections comprises two components as shown in Fig. 1-6 and has a double wall construction, Figure 3 shows a horizontal cross section looking downwardly at the corner joint, it shows a double wall structure, ribs 16 and 17 are used to space an inner wall (first plastic wall component - inner wall 12) and an outer wall (second plastic wall component - outer wall 13) a uniform distance and to secure the walls to each other. The cross section of the inner and outer walls and ribs is shown in Fig. 3, the ribs 17 which extend outwardly from the inner wall (first wall component) 12 are wider (their width extends outwardly from the outer surface of the inner wall 12) and thicker (as the enlarged protrusions 32 provide a maximum thickness) than

the thickness of the web (the web is a portion of inner wall 12 extending between two ribs). Figure 2 discloses a better view of the rib 17 on the inner wall 12 in the exploded double wall section shown on the right side of Fig. 2. The rib 17 extends longitudinally in a vertical direction, the width of rib 17 extends outwardly and the thickness varies from a thick portion near its connection with the inner wall and progressively becomes thinner at points spaced further from the inner wall until it reaches a maximum thickness at enlarged protrusion 32 at the distal edge of the rib. The thickness of the enlarged protrusion portion of the rib is clearly greater than the web thickness.

Re claims 6 and 26, the cubic shape of the container allows the container to be placed in an orientation wherein the container rests upon a sidewall such that the former sidewall is considered a base wall including the wall section with the double wall construction as referred to previously.

Re claim 7, the ribs 16 which extend inwardly from the outer wall (second wall component) 13 are wider (their width extends inwardly from the inner surface of the outer wall 13) than the thickness of the web (the web is a portion of outer wall 13 extending between two ribs).

Applicant's arguments filed January 26, 2009 have been fully considered but they are not persuasive. Applicant sets forth that rib height is the extension of the rib away from web. This seems contrary to conventional thinking wherein a height is usually a vertical height. Also, applicant seems to use the term "width" for a rib to be interpreted as "thickness," while the "thickness" of a web is its thickness. Conventional thinking would establish the width of a rib to be a direction transverse to its longitudinal length yet different than a thickness. Applicant's

specification didn't establish a specific definition of "rib width" that would be different than conventional.

The limitations of both claims 1 and 7 are met by Schafer. These limitations are also met by Burling.

In the discussion of claim 14, applicant refers to Fig. 6A. This is peculiar as the elected species is Fig. 4. Figure 6A does read on claim 14. Schafer meets the limitations of claim 14. Applicant's argument with regard to Burling not anticipating claim 14 is persuasive and claim 14 is no longer rejected by Burling.

Re claim 20, applicant refers to Fig. 17. It is believed that claims 20-22 and 28-30 read exclusively on Fig. 17. Claims 20-22 and 28-30 have been withdrawn for this reason.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc